

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMES WILSON CALLOWAY,

Petitioner,

v.

BRENDA M. CASH, Warden

Respondent.

Case No.: 02-CV-5882 RMW

**ORDER GRANTING PETITION FOR
WRIT OF HABEAS CORPUS**

Petitioner/appellant James Wilson Calloway is confined in a California state prison serving a sentence of 25 years to life under California's Three Strikes law that was imposed in 2001. On August 20, 2009, this Court denied petitioner's petition for writ of habeas corpus and granted him a certificate of appealability.

This case is on remand to this Court as a result of the Ninth Circuit's memorandum granting habeas relief on May 3, 2012. In reliance on *Wilson v. Knowles*, 638 F.3d 1213 (9th Cir. 2011), the Ninth Circuit concluded, with regard to the question of whether one of petitioner's prior convictions constituted a "strike," that the state trial court "erred in not permitting the jury to determine whether Calloway actually inflicted great bodily injury upon his 1993 assault victim and, thereby,

1 violated Calloway's clearly established constitutional right to a jury trial."

2 Memorandum at 4. The Ninth Circuit held that petitioner's "petition for *habeas* relief
3 must be granted." *Ibid.* It issued the mandate on January 16, 2013.
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5 IT IS HEREBY ORDERED that petitioner James Wilson Calloway's
6 petition for writ of habeas corpus is granted, and the requested writ shall therefore
7 issue.
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9 IT IS FURTHER ORDERED that petitioner's sentence is VACATED,
10 and his case is REMANDED to the Superior Court of California for the County of San
11 Mateo for re-sentencing in a manner consistent with the views stated in the Ninth
12 Circuit's memorandum decision and the precedent case *Wilson v. Knowles*, 638 F.3d
13 1213 (9th Cir. 2011).
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15 IT IS FURTHER ORDERED that the State of California shall
16 commence any resentencing proceedings within 45 days of the date of service of this
17 order on the San Mateo County District Attorney's office.
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19 DATED: February 5, 2013
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21 
22 The Honorable Ronald M. Whyte
23 U.S. District Judge
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